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Title: Entergy Nuclear Vermont Yankee
Vermont Yankee Nuclear Power Station

Docket Number: 50-271-LA

ASLBP Number: 15-934-01-LA-BD01

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1 UNITED STATES OF AMERICA

2 NUCLEAR REGULATORY COMMISSION

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4 ATOMIC SAFETY AND LICENSING BOARD PANEL

5 + + + + +

6 HEARING

7 -----x

8 In the Matter of: : Docket No.

9 ENTERGY NUCLEAR VERMONT : 50-271-LA

10 YANKEE, LLC, AND : ASLBP No.

11 ENTERGY NUCLEAR : 15-934-01-LA-BD01

12 OPERATIONS, INC. :

13 (Vermont Yankee Nuclear :

14 Power Station) :

15 -----x

16 Monday, December 1, 2014

17
18 Teleconference19
20 BEFORE:

21 E. ROY HAWKENS, Chairman

22 DR. MICHAEL F. KENNEDY, Administrative Judge

23 DR. RICHARD E. WARDWELL, Administrative Judge

24

25

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P R O C E E D I N G S

3:07 p.m.

CHAIR HAWKENS: My name is Roy Hawkens. I'm the Licensing Board Chairman in this case which is entitled Entergy Nuclear Vermont Yankee LLC, and Entergy Nuclear Operations, Incorporated, Docket Number 50-271-LA.

I'm at the headquarters, Rockville Headquarters, and joined by my fellow Board Members, Dr. Mike Kennedy and Dr. Rich Wardwell. Also joined by the Board's law clerk, Nicole Pepperl.

Would counsel for the parties please introduce themselves for the record? Let's start with Vermont.

MR. KISICKI: Aaron Kisicki on behalf of the Department of Public Service representing the State of Vermont.

CHAIR HAWKENS: Thank you. Entergy?

MS. RAIMO: Susan Raimo on behalf of Entergy.

CHAIR HAWKENS: Thank you. NRC Staff.

MS. MIZUNO: Beth Mizuno and Jeremy Wachutka for the NRC Staff.

CHAIR HAWKENS: Thank you very much.

As stated in this Board's order of

1 November 12th, we're conducting a telephonic oral
2 argument on whether Vermont's hearing request should
3 be granted. In that order we provided a list of six
4 topics that we asked the parties to be prepared to
5 include in their presentations. Those topics were not
6 exclusive, but they were topics which are of a
7 particular interest to the Board Members.

8 They consisted of, one, the timeliness of
9 Vermont's petition. Two, the regulatory meaning of
10 shutdown permanently. Three, the purpose and plain
11 language of 10 CFR Part 50, Appendix E. Four, the
12 status of the ERDS at facilities shut down after 1991.
13 Five, the interaction between 10 CFR Section
14 50.54(q) (3) and Appendix E. And six, the regulatory
15 responsibility for evaluating the interface between
16 licensees and state and local governments, and for
17 reviewing whether state and local emergency plans are
18 adequate and capable of being implemented.

19 During the oral argument we'll be hearing
20 from Vermont first. It's been allotted 60 minutes of
21 argument time and may reserve up to 15 minutes for
22 rebuttal. Entergy and the NRC Staff will follow. Each
23 has been allotted 30 minutes of argument time.

24 Mr. Kisicki, you may step up to the podium
25 now and do you wish to reserve any time for rebuttal?

1 MR. KISICKI: I would, Mr. Chairman. I'd
2 like to reserve 15 minutes for rebuttal, if I may.

3 CHAIR HAWKENS: All right. Why don't you
4 proceed with your argument then, Mr. Kisicki?

5 MR. KISICKI: Thank you. Good afternoon,
6 Mr. Chairman and Doctors. My name is Aaron Kisicki on
7 behalf of the State of Vermont. I think the State's
8 argument is fairly straightforward.

9 Entergy has petitioned the Board to
10 approve discontinuance of the Vermont Yankee Power
11 Station Emergency Response Data System or ERDS
12 connection as part of the pending license amendment
13 request or LAR reducing staff level at the plant upon
14 reactor shutdown.

15 10 CFR Section 50.54(q) (3) requires that
16 Entergy conduct an analysis demonstrating that any
17 changes to the VY emergency plan will not reduce the
18 effectiveness of the plant. ERDS is specifically
19 mentioned as part of the VY emergency plan and the
20 Vermont Radiological Emergency Response Plan or RERP.

21 Entergy has failed to conduct any analysis
22 demonstrating that no reduction in the effectiveness
23 of the VY emergency plan will result from the
24 discontinuance of ERDS in violation of Section
25 50.54 (q) (3) .

1 Vermont is concerned with the impact of
2 discontinuance on the effectiveness of the VY
3 emergency plan, the State RERP, and ultimately the
4 public health and safety of its citizens. Therefore,
5 the State requests that the Board accept this
6 contention that the Board conduct an in-depth inquiry
7 to consider two questions related to the pending LAR.

8 First, whether Entergy should be required
9 to conduct an analysis pursuant to Section 50.54(q) (3)
10 showing no decrease in the Vermont emergency plan's
11 effectiveness without ERDS before the LAR is ruled
12 upon. And second, if the Board determines such an
13 analysis is not required, should the LAR be rejected
14 because the loss of ERDS will decrease the
15 effectiveness of the Vermont Yankee and State
16 emergency plans, and the State's ability to protect
17 public health and safety in the event of an accident
18 at the facility.

19 I think before we move into the substance
20 of our discussion, I think it's appropriate and I
21 believe it's a threshold issue of the timeliness of
22 the Vermont Yankee petition that was filed on
23 September 22nd of this year.

24 As I think everybody is aware, there's
25 some discussion about whether or not the State of

1 Vermont's petition was filed in a timely fashion. In
2 short, the petition was filed in a timely fashion with
3 the NRC by December 22nd in a manner that enabled the
4 NRC to receive, read, authenticate, distribute, and
5 archive the submission.

6 Entergy was on notice that the petition
7 was to be filed and made no objection upon the receipt
8 of the filing shortly thereafter.

9 CHAIR HAWKENS: Mr. Kisicki, this is Judge
10 Hawken. We read in your reply brief that you had been
11 in discussions with Entergy before this filing
12 deadline came, and that your discussions led you,
13 perhaps, to believe that you might be able to avoid
14 filing a petition. Is that correct?

15 MR. KISICKI: That is correct, Mr.
16 Chairman. At the time leading up to our filing of the
17 petition, the State of Vermont had actively been
18 engaged with discussions and negotiations with Entergy
19 on a variety of subjects, including the issue of
20 emergency response preparedness. And it has been
21 negotiating in good faith with Entergy for a good
22 number of weeks, if not months, and there was a strong
23 belief on the part of the State that all these issues
24 would be resolved via negotiations prior to having to
25 have a petition filed. That ultimately ended up not

1 being the case, unfortunately.

2 CHAIR HAWKENS: When did you come to the
3 conclusion that you were not going to be able to reach
4 an agreeable settlement?

5 MR. KISICKI: As far as I understand, there
6 are many parties engaged in the discussions with
7 Entergy at that point. I think it was late in the week
8 prior to December 22nd. I think it was somewhere
9 around December 18th or 19th was about the approximate
10 date when the State realized at that time that a
11 filing would need to take place.

12 It's also my understanding that there was
13 some effort to continue negotiations over the weekend
14 prior to the Monday filing deadline involved.

15 CHAIR HAWKENS: All right, thank you.

16 JUDGE WARDWELL: Yes, this is Judge
17 Wardwell. Just one follow-up question on that. To your
18 knowledge, are those negotiations still taking place,
19 or have they completely been cut off?

20 MR. KISICKI: The negotiations are ongoing
21 with Entergy involving a variety of issues, including
22 this issue that we're speaking about today. I can't
23 speak to the status of those negotiations. I
24 personally am not the one that's involved in those,
25 but I do know, and I can represent on behalf of the

1 State that those negotiations are ongoing.

2 JUDGE WARDWELL: Thank you.

3 CHAIR HAWKENS: The Board has heard enough
4 about the timeliness issue, Mr. Kisicki, if you want
5 to move on to the next issue.

6 MR. KISICKI: Thank you. I think the next
7 issue that we'd like to address is the regulatory
8 meaning of the term "shut down permanently" for
9 purposes of Appendix E and Part 50. I'm sorry, it's
10 Part E -- Part 50, Appendix E. I apologize.

11 With respect to Subsection 4 that speaks
12 about shut down permanently for the exceptions of the
13 ERDS requirement, the State would advance the argument
14 that in the context of Appendix E, a shut down
15 facility for the purposes of ERDS would mean that a
16 shut down facility is one where the monitoring of all
17 the ERDS parameters are no longer necessary. In other
18 words, at the point where the plant is at a state
19 where none of the information that could be gleaned
20 from ERDS being operated in the event of an accident,
21 then for the purposes of Section 4, the facility would
22 be shut down permanently.

23 Until that time, as is the case here with
24 Vermont Yankee there's still many ERDS parameters that
25 could be useful not only on the State's emergency

1 plans, but is also clearly enumerated in the Vermont
2 Yankee emergency plan that indicates that ERDS
3 provides a critical information point not only in the
4 event of a reactor accident, but also a number of
5 accident scenarios that include problems with the
6 cooling pool, and a number of other scenarios that
7 were analyzed under the emergency plan LAR submission.

8 I think more to the point on a more
9 broader level, you know, if a facility were to be put
10 in a state where it can longer produce electricity,
11 commercially produce electricity that might be a
12 broader definition, but for here, our purpose for
13 discussion here I think that we can have a much more
14 narrow definition, and that is that if the ERDS
15 parameters don't make any sense, then they don't need
16 it any more, and the plant would be shut down
17 permanently. Here that's not the case.

18 CHAIR HAWKENS: Mr. Kisicki, Judge Hawkens
19 here. I just -- I want to make sure I understand your
20 view of the term "permanently shut down." Am I correct
21 that you view it as it would be a permanent cessation
22 of reactor operations, a representation that there
23 would no longer be any fuel put in the reactor again,
24 and a removal of all spent fuel from the site? All
25 those conditions would give rise then to satisfying a

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1 permanent shut down definition?

2 MR. KISICKI: I think I would disagree with
3 you on all three points, but for different reasons. I
4 think first and foremost, I think the permanently shut
5 down language that's in the ERDS exemption speaks to
6 permanently shut down facilities, not necessarily
7 reactors. In this case we have -- we'll soon have a
8 facility where there's no longer fuel or operation of
9 the reactor; however, we have a number of critical
10 components including the spent fuel pool, cooling
11 associated with it, and a number of electrical
12 passings are going on for security purposes. The plant
13 is still operational even though it's not producing
14 electricity.

15 I don't think we need to also -- we don't
16 need to draw the line with removal of all the spent
17 fuel off site. I guess I'd have to ask a clarifying
18 question, when you say removal of spent fuel off site,
19 do you mean removal from the fuel pool to the ISFSI
20 pad off site or removal of the spent fuel from the
21 ISFSI pad off site to a permanent storage facility?

22 CHAIR HAWKENS: Let me turn that question
23 right back to you. I'm looking for your view of the
24 term "permanent shut down."

25 MR. KISICKI: Sure. I think the facility

1 would be permanently shut down in the event that all
2 of the cooling operations for the fuel pool can be
3 shut down and this will mean the removal of all the
4 spent fuel from the fuel pool into the ISFSI pad off
5 site. At that point, the facility would no longer be
6 operating in any capacity. There would be no need for
7 ERDS data because there would be no risk of an
8 accident involving spent fuel inside the facility
9 itself.

10 There is, I think, a slight risk of there
11 being a dry cask accident on the ISFSI after the fuel
12 has been removed from the spent fuel on the ISFSI pad,
13 but in that instance I don't see necessarily a lot of
14 the ERDS parameters being applicable just off the top
15 of my head. However, I think if we were to brief the
16 issue we may be able to answer that with a little more
17 specificity.

18 CHAIR HAWKENS: And can you provide any
19 support in Appendix E for your view of that term,
20 "permanently shut down" term?

21 MR. KISICKI: Sure. Appendix E, Section 4,
22 Subsection 2 it reads: "Except for Big Rock Point and
23 all nuclear power facilities, not reactors that are
24 shut down, on site hardware will be provided at each
25 unit until the license are interfaced with -- each

1 unit by the licensee to interface with the NRC siting.

2 The exemption language speaks about shut
3 down facilities, not necessarily reactors. I think the
4 exemption applies through a broader range of
5 activities at a plant above and beyond just reactors
6 operation.

7 CHAIR HAWKENS: All right.

8 MR. KISICKI: Moving on, you can take a
9 closer look at the purpose and the plain meaning of
10 Appendix E in that plain language, is that really it's
11 designed -- it speaks to the development of an ERDS
12 systems at the operating plants at the time of the
13 promulgation of that language in 1991.

14 Section 4 is both descriptive and
15 perspective. It speaks to what operating facilities
16 must do in 1991, that is the provision of ERDS
17 hardware and software, not necessarily the operation
18 of it. Appendix E's assignment is to continue to
19 operate ERDS once the plant is -- it's silent to
20 continued ERDS use once a plant operating in 1991
21 shuts down. It's not necessarily prescriptive.

22 I think both Entergy and the NRC Staff
23 argue, and I think argue erroneously, that somehow
24 because -- that somehow there's a prescriptive tone to
25 the plain language of Appendix E that somehow because

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1 -- if you interpret it in a way that says that ERDS
2 use is not required once a facility is shut down, even
3 if you interpret it to encompass very broadly that it
4 would apply to this situation, even then it's not
5 prescriptive. It doesn't say you must shut down ERDS.
6 You must not operate ERDS. It just releases the
7 obligation of a plant to continue ERDS use.

8 Again, Subsection 4, Sub 2, the exception
9 applies to the provision of hardware, not necessarily
10 the operation or the use of ERDS. And that exception
11 makes sense when you look at it contextually at the
12 time that the exception was written. It makes no sense
13 for a plant to implement a system that wouldn't likely
14 be used or derive any benefit to incur the kinds of
15 costs that you would have to spend to implement the
16 system there. But here that doesn't necessarily
17 translate into a blanket just use of once the plant is
18 implemented -- that it implements it, it shuts down,
19 particularly in a case such as the one here where the
20 emergency plan specifically references ERDS use as
21 part of its emergency plan, the VY plan does that, and
22 the State emergency plan.

23 CHAIR HAWKENS: Mr. Kisicki, this is Judge
24 Hawkens.

25 MR. KISICKI: Sure.

1 CHAIR HAWKENS: How do you reconcile your
2 argument with the stated goal in the final rule, and
3 the stated purpose of Appendix E, Part 6 in the final
4 rule? For example, it says, "The objective of the
5 final rule is to insure timely and effective
6 implementation of ERDS to provide NRC increased
7 assurance that a reliable and effective communication
8 system is in place at operating power reactors."

9 MR. KISICKI: Again, I would reconcile it
10 by saying even if you were to read that language to
11 mean that ERDS systems are only applicable at plants
12 that are actually operating and the reactors are
13 actually operating, I don't think that's the lens
14 under which this Board should evaluate whether or not
15 we should have a hearing.

16 The State's contention revolves around
17 whether or not Entergy has provided sufficient
18 analysis under 50.54 that analyzes whether or not ERDS
19 discontinuance doesn't reduce the emergency plan's
20 effectiveness.

21 Here the emergency plan effectiveness
22 clearly is impacted by the loss of ERDS. There is no
23 less than five unique emergency situations that are
24 analyzed and are modified to go out to ERDS in the
25 emergency -- in the LAR that's been presented to you.

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1 Those include scenarios that talk about ground assault
2 security threats, fuel handling accidents, aircraft
3 potential threat, control room evacuation, and spent
4 fuel pool -- I'm sorry, spent fuel pool cooling, and
5 general emergency with a radioactive release and
6 protective action recommendations.

7 The bottom line is that the NRC understood
8 that there was a high value and safety value in
9 implementing ERDS back in 1991 relative to the costs
10 involved. Even though the reactor still isn't running
11 now, there are viable action scenarios that have been
12 analyzed under the emergency plan here, and in all of
13 those scenarios Entergy simply says that ERDS will no
14 longer be applicable to respond to those types of
15 accidents. That's at odds with what the overall plan
16 says, the Entergy emergency plan says, and what the
17 Vermont State Emergency Response Plan says.

18 JUDGE WARDWELL: This is Judge Wardwell.
19 You prefaced all of that with a statement, even if you
20 did read it this way, my question to you is how do you
21 read that statement that was quoted to you by Judge
22 Hawken from the history of the regulation. I believe
23 it was the third paragraph of that.

24 MR. KISICKI: Sure. I think that you can --
25 - I mean, I don't -- I think that you could read it to

1 say that yes, you want to have effective communication
2 capabilities for the NRC at plants that have operating
3 reactors, but I don't think that that precludes the
4 Board to read it more broadly and say or at reactor
5 sites that don't have critical components that are
6 operating.

7 Again, the actual exemption language that
8 speaks to ERDS being exempt from being implemented
9 talks about facilities, not reactors. The language
10 that you quoted to me I think is a broad policy
11 position relative to a very narrow sort of exemption
12 that speaks to a broader class of facilities, or a
13 more narrow class of facilities that would apply under
14 the exemption.

15 JUDGE WARDWELL: Thank you.

16 MR. KISICKI: Thank you. I mean, I think to
17 move on, you know, if you look at the requirements of
18 50.54 (q) (3) --

19 CHAIR HAWKENS: Mr. Kisicki, Judge Hawkens
20 here again. When the rule was promulgated and
21 implemented in the early '90s, are you aware how many
22 plants at that time were -- reactors were shut down
23 but they still had spent fuel in spent fuel pools on
24 site?

25 MR. KISICKI: I am not aware of that, Mr.

1 Chairman.

2 CHAIR HAWKENS: All right.

3 MR. KISICKI: I will say this, is that I
4 think if you look at what's going on in the current
5 environment with recent plant shut downs and ERDS use,
6 from our understanding from the ERDS system itself
7 there's indications that three recent plant closures
8 still either are transmitting ERDS data, and that
9 would be at San Onofre where ERDS is still
10 transmitting on a continuous basis. Likewise, at
11 Kewaunee and Crystal River, both of those plants are
12 not transmitting continuously, however, they continue
13 to have ERDS capabilities which I think is telling in
14 the current environment.

15 But, again, if you look at Section
16 50.54(q)(3), those requirements and Appendix E, both
17 of them are bound by Section 50.47(b) emergency plan
18 requirements. You know, .54(q)(3) requires that any
19 change of the E Plan meet the Appendix E and 50.47(b)
20 requirement. And the .47(b) addresses the sufficiency
21 of communication and response coordination between the
22 licensee and state and local responders. ERDS is
23 critical to the 50.47(b) planning and communications
24 requirements, and it's referenced explicitly in the VY
25 emergency plan and Vermont RERP.

1 I mean, in the State's view situational
2 awareness is key to the RERP, things such as wind
3 direction and speed equals realtime data that's
4 critical for protective response on behalf of the
5 State, and for the plant response under the VY
6 emergency plan. And second, coupled with radiation
7 levels of the plants, that information is vital to any
8 sort of coordinated response, particularly in this
9 case where you have three states that are going to be
10 active in any sort of accident response. And, again --

11 CHAIR HAWKENS: Mr. Kisicki, I'm wondering
12 if you know the answer to this question. New Hampshire
13 and hearing like you, and do you know what their
14 position is on this matter?

15 MR. KISICKI: We have reached out to both
16 New Hampshire and Massachusetts. We have had no
17 indication that they do not support Vermont's
18 position, but we haven't heard an affirmative answer
19 back from either of them.

20 CHAIR HAWKENS: So, you're not speaking for
21 either of those states.

22 MR. KISICKI: I am certainly not.

23 CHAIR HAWKENS: And neither of them has
24 taken a position on the matter before us.

25 MR. KISICKI: Correct.

1 CHAIR HAWKENS: Now, what alternatives does
2 the State of Vermont have if the ERDS link with it is
3 discontinued?

4 MR. KISICKI: Well, at this point the
5 Vermont State's Emergency Response Agencies, and there
6 are a number of them who work in coordination, are
7 trying to examine what those alternatives would be.
8 That's a major driver of why we're submitting the
9 petition to the NRC at this point because the nuclear
10 engineering decommissioning specialist has identified
11 no less than 37 ERDS parameters that are critical for
12 continued operation of the RERP plan.

13 At this point, all of those agencies are
14 trying to assess what alternatives, if any, there
15 might possibly be in the absence of ERDS data coming
16 to them. But with that being said, it would be
17 extremely difficult to find an alternative to getting
18 those 37 ERDS parameters that our experts have
19 determined are crucial to proper response
20 preparedness.

21 CHAIR HAWKENS: What parameters, if any,
22 does the Inform Notification System provide?

23 MR. KISICKI: I'm sorry, could you repeat
24 that?

25 CHAIR HAWKENS: What parameters, if any,

1 does the Inform Notification System provide to
2 Vermont?

3 MR. KISICKI: Unfortunately, I can't speak
4 to that. I'm not aware of what parameters the Inform
5 System provides Vermont at this point.

6 CHAIR HAWKENS: All right.

7 MR. KISICKI: But I think if you look at
8 the requirements of 50.47(b), it speaks to a number of
9 issues, particularly with respect to Subsections 1, 4,
10 5, 6, 8, and 9, to speak -- there's a lot of overlap
11 between those that speak to the critical interplay
12 between the licensee, the NRC, and local and state
13 responses to any sort of accident that may occur at
14 the plant. And here, I mean, the State entered into an
15 MOU back in 1996 with the NRC specifically to gain
16 access to ERDS, and the Vermont Emergency Response
17 Plan has been largely predicated on using data from
18 ERDS in preparing its response.

19 If you remove ERDS, particularly under
20 this -- in this situation where Entergy has done so
21 without even the slightest bit of analysis as to the
22 impact on plan's effectiveness, both its own plan and
23 for the State plan, it undermines a lot of the
24 50.47(b) requirements. And, again, that analysis just
25 simply hasn't been done here, and it should be.

1 You know, I think beyond that the NRC has
2 identified that it has a mandated role to protect
3 public health and safety, and it has to be capable of
4 providing state and local authorities with independent
5 assessments, protective actions recommended by the
6 licensee. You know, in this instance the NRC has the
7 responsibility to determine whether or not the Section
8 50.54(q)(3) licensee emergency plan changes allow for
9 adequate communication and coordination with state and
10 local authorities as contemplated in 50.47(b) and
11 Appendix E. That simply has not been done.

12 Second, you know, the 50.54(q)(3) analysis
13 should be conducted here because, again, the Vermont
14 Yankee Emergency Plan and the RERP references ERDS as
15 a means to communicate with the three states. And the
16 NRC has been presented with a representation by the
17 licensee that ERDS has a critical benefit. That's
18 codified in their own emergency plan that they seek to
19 amend right now.

20 You know, here the NRC's ability to -- you
21 know, this Board's ability to review the sufficiency
22 of the State plans should be very easy because, again,
23 there's a Memorandum of Understanding between the
24 State of Vermont and the NRC that allows for access to
25 ERDS data. And that alone is telling, it shows that

1 the NRC has recognized that there is significant value
2 of having the State have access to ERDS data.

3 Again, all -- you know, at the core of our
4 contention, all that we're seeking for is that either
5 (a) that there's a sufficient showing by Entergy that
6 there is no reduction in plan effectiveness with the
7 loss of ERDS, or to provide an equal alternative, if
8 not better alternative to ERDS in the event that ERDS
9 no longer is accessible by the State. I mean, that's
10 critical.

11 Again, you know, ERDS has such a critical
12 value, this -- you know, the Commission agreed to
13 backfit ERDS into the system because it recognizes
14 there is such a high value to ERDS relative to the
15 cost. Those costs have already been incurred. The cost
16 to continue ERDS use is minimal compared to the
17 benefit that it would serve both VY and the State in
18 the event of an emergency.

19 And more to the point, ERDS right now is
20 continuously transmitting at the VY plant, because as
21 the case with most, if not all Entergy plants, there
22 needs to be little change in terms of -- with respect
23 to the staffing level reduction. There is no -- almost
24 no change in the responsibility with respect to ERDS
25 in the event of an accident considering that it

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1 already transmits now.

2 In summation, we request that there would
3 be an in-depth inquiry, either a Subpart G proceeding
4 because there's still questions as to whether or not
5 the omission, the analysis required by 50.54(q)(3) was
6 intentional or not, or alternatively a Subpart L
7 proceeding where we would just ask for the Board to in
8 its discretion, you know, add limited use of discovery
9 and cross-examination to fill out the record and make
10 a proper determination with respect to the State's
11 contention.

12 In sum, we think our contention, we've
13 made a pretty strong showing that's been backed by
14 expert opinion. It was attached to our initial
15 petition, and we have a nuclear expert, Tony
16 Leshinskie, who has over 30 years of experience in the
17 industry, and his determination was that the loss of
18 ERDS is significant and detrimental to the State's
19 well being. I mean the finding of this is certainly
20 material to the kinds of findings that the Board is
21 going to have to make with respect to this LAR, and we
22 would ask that the contention be accepted, and that we
23 have a proper proceeding going forward.

24 CHAIR HAWKENS: More questions? Thank you,
25 Mr. Kisicki.

1 MR. KISICKI: Thank you.

2 CHAIR HAWKENS: Ms. Raimo, we'll hear from
3 you now.

4 MS. RAIMO: Thank you, Your Honor.

5 Entergy appreciates the opportunity to
6 address the Board this afternoon. We know that the
7 Board has read our answer of October 20th, so I don't
8 plan to repeat many of the arguments that we already
9 made there, but I do want to respond to some of the
10 statements that the State made in its reply dated
11 October 31st, and also to some of the statements that
12 counsel just made this afternoon.

13 But before I address any of the specific
14 topics that the Board had requested that we address,
15 I want to make the record very clear on a critical
16 fact that the State got wrong many times in its reply,
17 and that is, Vermont Yankee does not require any staff
18 to activate, or operate ERDS during an alert or other
19 emergency situation.

20 Now, as we stated in our answer, and this
21 is also stated in Section 7.10 of our Emergency Plan,
22 VY maintains a continuous ERDS connection with the
23 NRC. That means that plant data is being transmitted
24 continuously 24 hours a day, seven days a week to the
25 NRC even during normal plant operations. VY is

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1 transmitting data to the NRC via ERDS as I speak.

2 If there were to be an emergency event, VY
3 would continue to transmit plant data via ERDS without
4 any additional action needed. Again, that's because
5 the system is continuously on and transmitting plant
6 data.

7 CHAIR HAWKENS: That's while the -- that's
8 before the reactor is in permanently shut down
9 condition, though. Is that correct?

10 MS. RAIMO: That's correct. That's today
11 and as long as the reactor is operating.

12 CHAIR HAWKENS: Okay.

13 MS. RAIMO: That's correct.

14 JUDGE WARDWELL: So, what would happen --
15 this is Judge Wardwell. What would happen once the
16 reactor is shut down and the fuel is removed to the
17 spent fuel pool, what level of effort is required for
18 you to maintain those parameters that they deem is
19 necessary associated with the spent fuel pool and any
20 meteorological data, et cetera, that they discuss?

21 MS. RAIMO: Well, Your Honor, the plant
22 will continue to monitor those conditions. It's two
23 separate aspects, and I'll explain one of them at a
24 time.

25 We plan to discontinue transmitting data

1 via ERDS to the NRC, the plant that I just mentioned.

2 JUDGE WARDWELL: And why are you doing
3 that?

4 MS. RAIMO: Because, Your Honor, the way
5 that we interpret the regulations, and that's Appendix
6 E, Section 6. The regulations do not require
7 permanently shut down plants to maintain their
8 connection to the NRC via ERDS. And we believe the
9 regulation is very clear on that.

10 JUDGE WARDWELL: But if someone was to read
11 it differently than -- but if it -- let me rephrase
12 that.

13 Does the regulation require you to shut
14 down ERDS?

15 MS. RAIMO: No, it does not require us to
16 shut down ERDS.

17 JUDGE WARDWELL: Okay. So, if it takes no
18 effort to keep it going, why are you shutting it down?

19 MS. RAIMO: Well, Your Honor, I will
20 respectfully disagree that there is no effort for us
21 to continue to maintain ERDS.

22 JUDGE WARDWELL: How much effort is needed
23 to continue that?

24 MS. RAIMO: Well, as I mentioned, the data
25 will continue to be generated, and we will continue to

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1 monitor that data. However, there -- now, ERDS is
2 essentially an information technology infrastructure.
3 And as we discussed in our answer, there is a very
4 complex configuration of systems that is involved in
5 transmitting the data from the plant through the
6 various servers within the Entergy IT structure to the
7 NRC. And there is a significant cost associated with
8 that.

9 JUDGE WARDWELL: And how much in the
10 ballpark is that cost?

11 MS. RAIMO: Based on some rough estimates,
12 Your Honor, we estimated that it would cost
13 approximately \$680,000 to maintain all of the IT
14 equipment and support personnel that are required to
15 maintain the system between now and 2020, which is the
16 time that we plan to move all of the fuel to the
17 ISFSI.

18 JUDGE WARDWELL: Did you see the -- review
19 the cost figures that was in the regulatory history.
20 I believe on page 40183 in the Federal Register it
21 said it would cost about \$153,000 to install the
22 equipment and run the system for 30 years. There seems
23 to be a disparity between this \$153,000 to buy
24 equipment, install it, and then run it for 30 years,
25 and what you're estimating is going to be required to

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1 continue the operation of it after the plant shuts
2 down until the fuel is removed from the pool.

3 MS. RAIMO: Your Honor, you know, to be
4 honest, I don't know what went into that \$150,000.
5 That was quite some time ago, and that may have just
6 been for the initial setup cost.

7 JUDGE WARDWELL: Do you have any
8 information that leads you to believe that Entergy
9 protested that number in the past during the
10 rulemaking in '91?

11 MS. RAIMO: Your Honor, I don't have that
12 information. What I can tell you is that there are
13 significant costs that are needed to maintain the
14 equipment that we use to transmit the data to the NRC.

15 JUDGE WARDWELL: What's your current plan
16 for removing the fuel from the spent fuel pool to the
17 ISFSIs?

18 MS. RAIMO: Our current plan is to complete
19 that by 2020, and that's dependent on certain
20 regulatory approvals in the interim.

21 JUDGE WARDWELL: So, about six years after
22 shut down is a fair number we can use here for our
23 general assessment?

24 MS. RAIMO: That's our current planning
25 estimate, Your Honor.

1 JUDGE WARDWELL: And you say it's going to
2 cost -- so that ends up to be more than \$100,000 a
3 year you're estimating for each year that the fuel is
4 in the pool. Is that correct?

5 MS. RAIMO: Yes, Your Honor, that's
6 correct.

7 CHAIR HAWKENS: Let's go back to your
8 interpretation of the rule, Ms. Raimo. You, I take it,
9 disagree with Mr. Kisicki's interpretation of the term
10 "permanently shut down" nuclear power facility. Is
11 that correct?

12 MS. RAIMO: That's correct, Judge Hawkens.

13 CHAIR HAWKENS: How would you interpret it,
14 and why?

15 MS. RAIMO: We interpret permanently shut
16 down to mean plants that have docketed the
17 certifications of permanent cessation of operations
18 and permanent removal of fuel from the reactor vessel.

19 As Your Honor has pointed out, the
20 Statement of Considerations that accompanied the
21 Appendix E final rule make it pretty clear that the
22 ERDS rule was intended to apply to operating reactors,
23 and not to nuclear facilities more broadly. We believe
24 that's an unreasonably broad interpretation of that
25 rule.

1 CHAIR HAWKENS: That rule -- what does that
2 rule do? What's the purpose of that rule?

3 MS. RAIMO: Of Appendix E, Your Honor?

4 CHAIR HAWKENS: Yes.

5 MS. RAIMO: That rule was intended -- just
6 a second, bear with me.

7 CHAIR HAWKENS: Well, let me just quote to
8 see if you disagree. The third paragraph of the
9 Statement of Consideration says that "The objective of
10 the final rule is to insure timely and effective
11 implementation of the ERDS to provide NRC increased
12 assurance that a reliable and effective communication
13 system that will allow NRC to monitor critical
14 parameters during an emergency is in place at
15 operating power reactors." You remember that?

16 MS. RAIMO: Yes, Your Honor. Thank you.

17 CHAIR HAWKENS: So, it's an implementations
18 rule. Is that a fair assessment?

19 MS. RAIMO: Yes, I would agree with that,
20 Your Honor.

21 CHAIR HAWKENS: It also talks about
22 activation which as you pointed out we don't have to
23 worry about here because you're -- the way it's set up
24 there it's always activated. Correct?

25 MS. RAIMO: Yes.

1 CHAIR HAWKENS: I think it also talks about
2 maintenance, doesn't it?

3 MS. RAIMO: Yes, it does.

4 CHAIR HAWKENS: Would you point to any
5 place where either the Statement of Considerations or
6 the rule itself talks about termination or
7 decommissioning of that system?

8 MS. RAIMO: I don't believe the rule, the
9 text of the rule itself does, Your Honor.

10 CHAIR HAWKENS: Nor does the flavor of it.
11 Correct? I mean, it is an implementation rule.

12 MS. RAIMO: It is an implementation rule;
13 however, I would point to some very recent guidance
14 that the NRC Staff issued that suggests that
15 interpreting that the exclusion -- excuse me. The
16 exclusion applies to shut down, permanently shut down
17 reactors.

18 CHAIR HAWKENS: And does it define
19 permanently shut down reactors in that guidance?

20 MS. RAIMO: Yes, it does. And the specific
21 guidance I'm referring to is a June 2nd, 2014
22 memorandum from Robert Lewis, the NRC Director of
23 Division Preparedness and Response. The subject is
24 "Emergency Response Data Systems at plants that have
25 permanently ceased operations." And the memorandum

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1 states very clearly that, and I'm quoting, "The
2 requirements in Section vi of Appendix E do not apply
3 to nuclear power reactor licensees who have submitted
4 a Certificate of Permanent Cessation of Operations."
5 And the memorandum continues, and I'm quoting again,
6 "ERDS requirements are not applicable to facilities
7 which have permanently ceased operations."

8 Now, we recognize that this memorandum is
9 guidance and does not have the force of law; however,
10 it's very persuasive guidance that's entitled to due
11 consideration for several reasons. Number one, it was
12 issued very recently, in June 2014. And, number two,
13 it was issued by the Director of the NRC division that
14 has responsibility for overseeing emergency
15 preparedness. In other words, these are the Agency's
16 subject matter experts on emergency planning.

17 CHAIR HAWKENS: What does that memo say
18 about the criteria for retiring a system that's
19 already operating?

20 MS. RAIMO: I believe the memorandum is
21 intended to speak to licensees who have recently shut
22 down, that they do not need to maintain their systems
23 any longer.

24 CHAIR HAWKENS: Is that true with all?
25 Doesn't it says that permanent shut down facilities

1 has the authority to retire the ERDS without NRC
2 approval only if it is not described in its emergency
3 plan?

4 MS. RAIMO: No, I don't believe that's
5 entirely correct, Your Honor. You're correct that if
6 ERDS is described in the emergency plan, that there
7 are other steps that the licensee has to take.

8 CHAIR HAWKENS: Okay. And has ERDS been
9 described in your emergency plan?

10 MS. RAIMO: It is described as a method of
11 communication with the NRC. It's not --

12 CHAIR HAWKENS: Okay. What are those other
13 steps then that need to be taken according to the
14 memo?

15 MS. RAIMO: The licensee needs to prepare
16 an evaluation in accordance with 50.54(q).

17 CHAIR HAWKENS: And have you done that?

18 MS. RAIMO: We are in the process of
19 finalizing an evaluation.

20 CHAIR HAWKENS: Well, as far as when you
21 submitted your license application that hadn't been
22 completed. Is that correct?

23 MS. RAIMO: That's correct, Your Honor. And
24 the reason for that is because our license amendment
25 request is not a request to retire the ERDS system. It

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1 really has nothing to do with ERDS at all. Our license
2 amendment request is focused on staffing reductions.
3 It's not a request to retire --

4 CHAIR HAWKENS: Doesn't staffing reductions
5 hinge on the premise that the ERDS is not functional?

6 MS. RAIMO: No, Your Honor, and that's the
7 point I was trying to make earlier, and that the State
8 has gotten this wrong. The State believes that we need
9 staff at VY to activate or operate ERDS during an
10 emergency, and that's their hook, so to speak, of
11 bringing their contention within the scope of the
12 proceeding. But as I said, it's factually flawed.
13 Their premise is factually flawed because we don't
14 require any staff to activate or operate the ERDS
15 during an emergency.

16 So once you accept that fact, and if you
17 look at the State's arguments in that light, you will
18 see that the issue of ERDS really has no place in this
19 proceeding at all.

20 CHAIR HAWKENS: Well, ERDS has to be
21 maintained, and you've got a budget of over \$600,000
22 for six years, that's \$100,000 a year. I assume that
23 includes some labor cost associated with keeping that
24 system running. Is that not correct?

25 MS. RAIMO: There are some IT support

1 costs, yes, but those --

2 CHAIR HAWKENS: And if that system is not
3 running, that information won't be available to people
4 to assess that data. Correct?

5 MS. RAIMO: Your Honor, I -- that's another
6 point I wanted to address. Okay? The idea that if the
7 State does not have access to ERDS, that it would have
8 no information with which to facilitate its decision
9 making during an emergency is not correct. I mean, you
10 could read the State's reply and you could listen to
11 the State's presentation today and walk away with the
12 idea that without ERDS, the State has absolutely no
13 access to VY plant information, and that's just not
14 true.

15 CHAIR HAWKENS: Tell -- I asked Mr. Kisicki
16 about what parameters Entergy would provide over the
17 Inform Notification System. Can you tell me what
18 parameters would be provided?

19 MS. RAIMO: Your Honor, I don't believe we
20 provide any plant parameters via Inform. I believe
21 that's merely a notification, initial notification
22 tool --

23 CHAIR HAWKENS: All right.

24 MS. RAIMO: -- once an emergency is
25 occurring.

1 CHAIR HAWKENS: So, in the event of an
2 emergency if Vermont wanted certain parameters, how
3 would Entergy provide them once the -- there's been a
4 permanent cessation of operation -- of reactor
5 operations and permanent removal of fuel from the
6 reactor?

7 MS. RAIMO: Yes. Some of these methods are
8 described in our -- in the current emergency plan. And
9 this is at Section 6.1.3. "In the event of an alert or
10 a high emergency classification, Entergy would
11 activate what's called the Emergency Operations
12 Facility/Recovery Center," or I'll call it EOF for
13 short.

14 The EOF is located in Brattleboro, Vermont
15 about nine miles from the site, and it serves as a
16 facility to coordinate the activities of VY emergency
17 response personnel, to evaluate accident conditions,
18 and to maintain coordination and communications with
19 offsite response authorities.

20 Entergy provides space and communications
21 capabilities to representatives from the three states,
22 Massachusetts, New Hampshire, and Vermont at the EOF
23 during an emergency. And for Vermont in particular, we
24 provide minimum space for three state representatives
25 there.

1 Now, the same plant data that we transmit
2 to the NRC via ERDS is displayed on monitors located
3 in the EOF. And this data includes the containment
4 parameter data, area radiation monitor data, and
5 meteorological data. These are all the parameters that
6 the State has expressed continued interest in.

7 CHAIR HAWKENS: But there will be three
8 Vermont representatives there --

9 MS. RAIMO: Yes, Your Honor.

10 CHAIR HAWKENS: -- having access to this
11 information on a continuous basis?

12 MS. RAIMO: That's correct. This
13 information can be viewed in real time by the State
14 officials who are stationed at the EOF.

15 CHAIR HAWKENS: And what ability do they
16 have to communicate that information to other Vermont
17 representatives that are not at that facility?

18 MS. RAIMO: We provide communications
19 capabilities for them by phone, fax, and computer, and
20 email.

21 CHAIR HAWKENS: Are these dedicated phones?
22 In other words, can one or more of those Vermont
23 representatives have continuous access to a dedicated
24 phone to talk continuously to his counterpart that's
25 off site?

1 MS. RAIMO: Yes, Your Honor, we do have
2 dedicated phones for them.

3 JUDGE KENNEDY: This is Judge Kennedy. Is
4 this different than the way the data is communicated
5 during power operations? I mean --

6 MS. RAIMO: This is -- Your Honor, this is
7 -- what I'm describing now, what I just described now,
8 that's how we would communicate information to the
9 State representatives at the EOF during an emergency.
10 If an emergency were to occur today while the plant
11 was operating, this is the process that would occur.

12 JUDGE KENNEDY: Are you suggesting that
13 there's no difference in functionality whether the
14 ERDS is functioning or not as far as the State of
15 Vermont is concerned? This is Judge Kennedy, again.

16 MS. RAIMO: Your Honor, we believe that the
17 State has equal access to the plant data at the EOF as
18 it does at ERDS. And, in actuality, at the EOF we
19 provide additional information. We provide information
20 related to the spent fuel pool that we do not provide
21 to the NRC via ERDS.

22 JUDGE WARDWELL: Can I ask you one more
23 clarifying question to make sure I've got this
24 correct?

25 MS. RAIMO: Yes.

1 JUDGE WARDWELL: You were stating earlier
2 that I believe that none of the labor reductions in
3 your license application are associated with the ERDS
4 termination, at least that's what I gleaned from your
5 statements. Is that what you would state now?

6 MS. RAIMO: I would, Your Honor. That's
7 correct, Judge Wardwell.

8 JUDGE WARDWELL: Thank you.

9 CHAIR HAWKENS: Tell me about the -- this
10 is Judge Hawken's, the Section 50.54(q)(3) analysis
11 that appears to be ongoing. If Vermont wanted to
12 challenge the outcome of that, would they have the
13 opportunity?

14 MS. RAIMO: Your Honor, I don't believe
15 there is a regulatory basis for them to challenge that
16 outcome. What would happen is, once our evaluation is
17 finalized, and we expect it to show that the modified
18 emergency plan would continue to meet the requirements
19 of Appendix E and 50.47(b), and we would also expect
20 it to show that there would be no reduction in the
21 effectiveness of the emergency plan, so that we would
22 be able to make the revisions to the emergency plan to
23 eliminate ERDS as a communication tool with the NRC
24 once we finalize that evaluation. And we would provide
25 that evaluation to the NRC, and we would retain it for

1 our files.

2 JUDGE KENNEDY: This is Judge Kennedy. When
3 you talk about the effectiveness of the emergency
4 plan, are you including the effectiveness of the State
5 of Vermont's emergency response plan, as well as
6 Entergy's emergency response plan?

7 MS. RAIMO: Your Honor, the regulations,
8 and I'm reading from 50.54(q)(1), "Define reduction in
9 effectiveness as a change in an emergency plan that
10 results in reducing the licensee's capability to
11 perform an emergency planning function in the event of
12 a radiological emergency." So, in answer to your
13 question it's just the licensee's emergency plan that
14 we're talking about.

15 JUDGE KENNEDY: So, when you look at the
16 50.47(b) requirements that are the emergency planning
17 standards and you say after you make this change using
18 the 50.54(q) analysis, are you only focusing on the
19 Entergy emergency response plan? Isn't that what I
20 just heard?

21 MS. RAIMO: Yes, Your Honor, we are. But to
22 your point on 50.47(b), you know, we -- our analysis
23 does need to show that we will continue to have prompt
24 communication with the principal emergency response
25 organizations and emergency response personnel, and

1 also with the public. And the VY emergency plan
2 identifies, as I said, ERDS as a communication tool
3 with the NRC and not with the State or other outside
4 emergency response organizations.

5 What I mentioned, the communication
6 methods that I mentioned at the EOF and also -- I'm
7 not sure if I got to mention this or not, but VY
8 personnel at the EOF would also be able to communicate
9 plant information data to the State representatives at
10 the Vermont Emergency Operations Center, and that's in
11 Waterbury, Vermont. Those communications can happen by
12 phone, email, and facsimile, as well.

13 JUDGE KENNEDY: Yes, and I think I'm
14 starting -- this is Judge Kennedy, again. I'm starting
15 to pick up a thread of this effectiveness argument,
16 and I'm not hearing the analysis. It may be offering
17 alternative methods of communication, but I haven't
18 heard any measurement of equal effectiveness between
19 the different approaches post-ERDS, and pre-ERDS. And
20 I'm just interested in understanding if that's part of
21 the evaluation in the analysis.

22 MS. RAIMO: Your Honor, I think I see what
23 you're having an issue with, because I have not
24 explained that yet.

25 JUDGE KENNEDY: Okay.

1 MS. RAIMO: The NRC guidance that I had
2 mentioned before, that's the June 2nd, 2014
3 memorandum, that -- and I'm going to read from that
4 guidance again. It indicates that, "Providing ERDS
5 data to the NRC is not an emergency planning function.
6 Because a reduction in effectiveness requires a
7 reduction of the licensee's capability to perform an
8 emergency planning function and providing data to the
9 NRC through ERDS is not an emergency planning
10 function, removing ERDS would not reduce the
11 effectiveness of the licensee's capability to perform
12 an emergency planning function. Accordingly, removing
13 ERDS would not reduce the effectiveness of the
14 licensee's plan."

15 So, that is the -- that guidance states
16 that it's the Staff's view that providing ERDS is not
17 an emergency planning function and, therefore, there
18 can be no reduction in effectiveness if you remove
19 that function.

20 JUDGE KENNEDY: Again this is Judge Kennedy
21 beating the horse. 50.47 to me seems to go broader
22 than just the licensee's emergency plan. And, in fact,
23 it gets into discussions of making sure that there's
24 adequate facilities, and equipment, and on and on to
25 provide an effective emergency response. I've always

1 viewed that as being inclusive of both the licensee
2 and the state and local response organizations. And
3 I'm struggling a little bit here to understand why the
4 effectiveness of the response of the state and local
5 agencies isn't more paramount here. I mean, I hear
6 what you're saying, but I --

7 MS. RAIMO: Yes.

8 JUDGE KENNEDY: I keep going back to 50.47,
9 and it seems to me that that's a broader view of
10 emergency response.

11 MS. RAIMO: Well, Your Honor, 50.47(a)(2)
12 references that FEMA does have some responsibility,
13 and actually that FEMA is the lead federal agency with
14 responsibility for assessing state and local off site
15 radiological emergency response plans. And it's FEMA's
16 responsibility to make findings and determinations
17 about whether the off site plans are adequate and
18 capable of being implemented.

19 CHAIR HAWKENS: Ms. Raimo, Judge Hawken
20 here. FEMA came in and said Entergy, in our view it's
21 critical for Vermont to have access to ERDS as they
22 currently do for their emergency planning purposes.
23 What would Entergy's response be?

24 MS. RAIMO: Your Honor, I'm not sure. I
25 mean, obviously, we would take that guidance under

1 advisement.

2 CHAIR HAWKENS: I assume that there's an
3 ongoing relationship between Vermont and FEMA, so FEMA
4 will have that opportunity, Vermont will have the
5 opportunity to make that type of argument to FEMA, but
6 we don't have to deal with that today.

7 MS. RAIMO: Your Honor, I can't speak to
8 what interactions may have with the State of Vermont,
9 but I certainly agree with your point, that we don't
10 have to deal with that today because, again, the issue
11 of ERDS is completely outside the scope of this
12 proceeding.

13 JUDGE WARDWELL: Well, you use the Lewis
14 memo which again is just guidance to quote, and you
15 quoted saying, "Accordingly, the removal of the ERDS
16 would not reduce the effectiveness of the licensee's
17 plan." I think that's where you ended to the quote. Is
18 that correct, if I remember?

19 MS. RAIMO: Yes, that's right, Your Honor.

20 JUDGE WARDWELL: But you failed to go on to
21 the next paragraph that started with a "However, if
22 the licensee's emergency plan relies on ERDS for the
23 provision of assessment data to the emergency response
24 organization, which is an emergency planning function,
25 the licensee will need to evaluate whether removing

1 ERDS results in reduction in the effectiveness for
2 special circumstances." Isn't that correct?

3 MS. RAIMO: That's correct, Your Honor.
4 But, again, our emergency plan does not rely on ERDS
5 to provide information to the emergency response
6 organization, or to off site emergency response
7 organizations. And, also, we are --

8 JUDGE WARDWELL: Isn't that, though, a
9 merits issue that we'd get to if, in fact -- I mean,
10 we can't explore it here with just legal argument. And
11 we'd really have to get into the merits of that
12 discussion if we admitted this contention. Isn't that
13 the time to do this?

14 MS. RAIMO: I believe that's correct, Your
15 Honor. But, again, you only get to that merit question
16 if you agree that ERDS is within the scope of this
17 license amendment request. And our position, again, is
18 that ERDS is well beyond the scope because, again, our
19 license amendment request only has to do with reducing
20 the number of staff, the number of on-shift staff who
21 are here on duty to deal with emergencies, and the
22 number of emergency response organization staff. And
23 those staff, the staff that are being reduced, have
24 nothing to do with the operation of ERDS. So, again,
25 we're at a loss to see how ERDS is coming into

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1 question here.

2 CHAIR HAWKENS: This is Judge Hawkens, Ms.
3 Raimo, again. Can you go back to Part 50, Appendix E,
4 Section 6. In your argument, if I understand it
5 correctly, although you view it as an implementation
6 rule, you view it, as well, as excepting those
7 facilities where the reactor is permanently shut down
8 from participating any more, or for maintaining their
9 ERDS system. Is that correct?

10 MS. RAIMO: I'm sorry, Your Honor. Could
11 you repeat the question?

12 CHAIR HAWKENS: I can't, that was too
13 lengthy a question.

14 MS. RAIMO: I lost you there.

15 CHAIR HAWKENS: You agreed with George
16 Wardwell that -- Judge Wardwell that Appendix E is an
17 implementation regulation.

18 MS. RAIMO: Yes.

19 CHAIR HAWKENS: But it's also, would you
20 agree, it identifies and requires certain
21 participation by certain categories of entities. And
22 those that are required to participate are those that
23 are not permanently shut down, and those that need not
24 participate in your view are those that are
25 permanently shut down.

1 MS. RAIMO: That's correct, Your Honor.

2 CHAIR HAWKENS: And tell me why your view
3 is that after you have permanently ceased reactor
4 operations and removed the fuel permanently you should
5 be viewed as being in the category of permanently shut
6 down, or within the category of those under the
7 regulation that need not maintain ERDS.

8 MS. RAIMO: Your Honor, because we view
9 those -- the permanently shut down as those reactors
10 who have submitted their Certifications of Permanent
11 Cessation of Operations and Permanent Defueling. And
12 I have not seen any basis, any regulatory basis for
13 the State's interpretation to include within that
14 category of plants that have moved all of their fuel
15 to the ISFSI pad. I don't see that anywhere in the
16 regulations.

17 JUDGE WARDWELL: Where in the regulation do
18 you see anything in regards to terminating the ERDS
19 system for an operating plant that did implement it as
20 part of this regulation and now is being --
21 transitioning into a shut down? Where is there
22 anything in this regulation that talks about
23 decommissioning or termination of a system?

24 MS. RAIMO: Your Honor, I don't see that in
25 the regulation. However, you know, I can only look to

1 regulatory construction. And if you look at the text
2 of the language itself --

3 JUDGE WARDWELL: That's where we should
4 start. Take us through it, please.

5 MS. RAIMO: Sure. And I'll read you the
6 relevant language that I'm reading from, and this is
7 Appendix E, Section (b)(i), Paragraph 2, and I'm
8 quoting: "Except for Big Rock Point and all nuclear
9 power facilities that are shut down permanently or
10 indefinitely, on site hardware shall be provided at
11 each unit by the licensee to interface with the NRC
12 receiving system."

13 Now, when I read that sentence I look at
14 the word "are." If the NRC's intent had been to apply
15 this exclusion only to those reactors that were
16 permanently shut down as of 1991 when the rule was
17 promulgated, I think the NRC could have made that
18 intent very clear by substituting the word "were"
19 instead of "are." So, instead the regulation would
20 read, "Except for Big Rock Point and all nuclear power
21 facilities that were shut down permanently or
22 indefinitely." And then again to make it clear they
23 could have inserted a date, as of a certain date.
24 Because if you look at the remainder of Appendix E,
25 Section vi, the rule does use certain dates by when

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1 licensees need to implement ERDS.

2 JUDGE WARDWELL: So, how are new licensees
3 going to meet that requirement if, in fact, this rule
4 applies to all licensees?

5 MS. RAIMO: I'm sorry, I did not understand
6 your question.

7 JUDGE WARDWELL: Well, you brought up these
8 dates that are in Appendix E. Correct?

9 MS. RAIMO: Yes, I did.

10 JUDGE WARDWELL: And the corollary to the
11 fact that the -- your argument that they are shut
12 downs means all future ones in addition to those that
13 existed in 1991. Let me ask you a side question right
14 now. Could that not just as well mean just those that
15 are shut down at that time? Is there any words in
16 there that say that interpretation is any worse than
17 your interpretation of this?

18 MS. RAIMO: Your Honor, I read the plain
19 language of the rule to -- not to mean that it only --
20 the exclusion only applies to reactors that were shut
21 down as of 1991. But in the absence of a clear
22 language in the rule, then I think you need to look at
23 the -- to the guidance, and the most recent, and
24 relevant, and on point guidance we have is the June
25 2014 memorandum from the NRC.

1 JUDGE WARDWELL: How about take -- let's
2 look at the purpose of the rule as stated in the
3 proposed rule and the rule when it was issued in final
4 form. Doesn't that guide our analysis, Ms. Raimo?

5 MS. RAIMO: I believe so, Your Honor. The
6 language that the Board recited earlier makes it clear
7 that it applies to operating power reactors, and that
8 the --

9 JUDGE WARDWELL: But there's no indication
10 of whether that means those that were existing at the
11 time the rule was promulgated, or whether those
12 include all those in the future, does it?

13 MS. RAIMO: I suppose it doesn't, Judge
14 Wardwell, and the best I can say is you have to look
15 at the June 2014 guidance as the NRC's current
16 interpretation and intent of its regulation.

17 JUDGE WARDWELL: If your interpretation was
18 correct that the rule itself would mean all future
19 plants that are shut down, we wouldn't we have needed
20 this -- that clarification, would we have, as provided
21 by the Lewis memo of June 2nd, this year?

22 MS. RAIMO: Your Honor, I think it's
23 because the language is not clear as we've been
24 discussing for the past several minutes. On the face
25 of it --

1 JUDGE WARDWELL: If, in fact, they were
2 talking about all future shut down ones, wouldn't you
3 anticipate that there'd be some type of indication of
4 how those and when those systems are going to be shut
5 down? There would be something in there about it,
6 wouldn't there?

7 MS. RAIMO: Your Honor, I can't speak to
8 how NRC writes its rules, but all I can say is we
9 believe the language of the rule is clear on its face
10 by itself, but if there is any question, that is
11 answered by the June 2014 memorandum.

12 JUDGE WARDWELL: Thank you.

13 CHAIR HAWKENS: Do you have anything to say
14 on the timeliness of Vermont's petition, Ms. Raimo,
15 beyond that which would -- that's in your answer?

16 MS. RAIMO: I certainly do, Your Honor.
17 I'll just make a couple of quick points because I know
18 the Board does not want to spend a lot of time on
19 that.

20 CHAIR HAWKENS: Also, your 30 minutes is
21 up, so we'd like you to wrap it up pretty quickly.

22 MS. RAIMO: Okay, thank you. We believe
23 it's the State's burden to justify whether or not they
24 filed their petition timely. And we were engaged in
25 negotiations with the State, we have been throughout

1 this process, and we were engaging in good faith.

2 As the State mentioned, at least from the
3 State's perspective I think I heard counsel say that
4 they knew as early as September 18th or 19th that
5 those negotiations were not going to be successful
6 enough to preclude the need for filing their petition.
7 And they did not comply with the rule.

8 CHAIR HAWKENS: Anything else on
9 timeliness? Do you agree that you did not get hurt by
10 the delay in electronic filing that was given to you
11 at the time it was?

12 MS. RAIMO: Your Honor, as I said, it's the
13 State's burden to justify why the Board should accept
14 its late filing. It's not Entergy's burden to show
15 that it was somehow prejudiced by the late filing. And
16 the regulation that -- Section 2.309(c) are pretty
17 clear that the determinative factor is that the State
18 needs to show good cause. Those regulations don't say
19 anything about the applicant needing to show
20 prejudice, or the other parties needing to show
21 prejudice before that filing is accepted.

22 CHAIR HAWKENS: Thank you. Do you have
23 anything else, Ms. Raimo?

24 MS. RAIMO: Your Honor, in closing I would
25 just urge the Board to reassess the State's contention

1 in light of the fact that ERDS is not within the scope
2 of this proceeding. This LAR is focused on staffing
3 reductions. We are not -- it does not request NRC
4 approval to discontinue ERDS. We don't need the NRC's
5 approval for that. We just urge the Board to review
6 the State's contention in that light. Thank you.

7 CHAIR HAWKENS: There's a question. Is it
8 your -- which is your stronger argument in your view,
9 Ms. Raimo, the fact that it's outside the scope
10 because this license amendment request deals with
11 staffing, or is it the argument that Vermont is making
12 a collateral attack on a regulation?

13 MS. RAIMO: The first one, Your Honor. ERDS
14 is not within the scope of this proceeding.

15 CHAIR HAWKENS: All right, thank you.

16 MS. RAIMO: Thank you.

17 CHAIR HAWKENS: Ms. Mizuno, we'll hear from
18 you now, please.

19 MS. MIZUNO: Yes, Your Honor. I am
20 accompanied today by Jeremy Wachutka, and the two of
21 us have taken various pieces of the six topics. I will
22 take three, and Mr. Wachutka will take the other
23 three.

24 And given the number of matters that have
25 been discussed, I don't know if you want an overall

1 opening but if you do, Mr. Wachutka can provide you
2 with one.

3 CHAIR HAWKENS: Why don't we go directly to
4 the meat of the argument?

5 MS. MIZUNO: Yes, sir. What would you like
6 to hear?

7 CHAIR HAWKENS: Are you going to start?
8 Let's hear your three points, and then we'll hear from
9 Mr. Wachutka.

10 MS. MIZUNO: Yes, Your Honor. My three
11 points are timeliness, the interaction between 54(q)
12 and Appendix E, and the question regarding interfaces
13 with state and local government.

14 CHAIR HAWKENS: All right.

15 MS. MIZUNO: With respect to timeliness, a
16 fair amount has already been said with respect to
17 that, so I only have a couple of points to make. I'd
18 like to support Entergy's argument that the standard
19 is good cause, not whether any party has suffered
20 harm. And good cause under 2.309(c). And good cause
21 can be demonstrated under that provision where
22 information was not available previously, or is
23 materially different than that available previously,
24 and the filing was timely based on the availability of
25 that information. That's not been proved here.

1 CHAIR HAWKENS: Why not 2.309(c)(2)?

2 MS. MIZUNO: (b)(2), I'm sorry. What -- I'm
3 sorry, I have to look it up. Can you tell me, sir?

4 CHAIR HAWKENS: It says it deals with the
5 request to change a filing deadline requested before
6 or after the deadline is past based on reasons not
7 related to the substance of the filing.

8 MS. MIZUNO: Oh, yes, Your Honor. But no
9 request has been filed. And the fact of Vermont filing
10 late does not itself substitute for a motion under
11 2.309(c)(2). That's our view.

12 There was another argument that was raised
13 and that had to do with the negotiations involving the
14 parties, Entergy and the State of Vermont. The NRC
15 Staff thinks it's really, really important for the
16 Judges to realize that the regulatory requirements
17 here for filing are in 2.209(b). They were also
18 restated in the Federal Register Notice, and those are
19 regulatory requirements. Those regulatory requirements
20 can't be tolled by parties negotiating, especially
21 they can't be tolled where the NRC -- it's the NRC's
22 own regulatory requirements, and we were not party to
23 any of those negotiations. Those requirements stand.

24 We'd also like to point out that this is
25 not a case of a pro se litigant where a certain

1 latitude is -- may be appropriate.

2 CHAIR HAWKENS: Should any latitude be
3 accorded to a State acting in its sovereign capacity
4 in our federal system?

5 MS. MIZUNO: Your Honor, a pro se litigant
6 that is not represented by counsel is one thing, but
7 here you have the State of Vermont represented by its
8 own attorney from the Attorney General's office, and
9 they're not equivalent situations, Your Honor. And
10 while latitude can be granted to a pro se litigant, we
11 do not believe that it's appropriate under these
12 circumstances. No good cause justification has been
13 shown.

14 And, in addition, there is a concern on
15 our part as these are our regulations. There's a
16 concern on our part that allowing a filing under these
17 circumstances could be read by future litigants as a
18 waiver of the regulatory requirements that petitioners
19 file by electronic -- by the electronic information
20 exchange, and it could be viewed as allowing a waiver
21 of those requirements.

22 CHAIR HAWKENS: All right, thank you. Let's
23 move on then.

24 MS. MIZUNO: Well, I wanted to make one
25 last point. Even if the petition had been filed

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1 properly, the contention is inadmissible. And we gave
2 you a number of reasons. Regardless of the fact that
3 it was procedurally defective, it was substantively
4 defective. It raises issues beyond the scope of the
5 license amendment, beyond the scope of the four
6 corners of the reducing staffing requirements. It
7 challenges a regulation. It is also for that reason
8 outside the scope of this proceeding, and it
9 challenges the Staff's no significant hazards
10 consideration determination which is itself an issue
11 that is beyond that which the Board has jurisdiction
12 over.

13 Can I go on to 50.54(q)(3) and Appendix E?

14 CHAIR HAWKENS: Please, do.

15 MS. MIZUNO: All right. Let's talk about
16 Appendix E. Appendix E establishes the minimum
17 requirements for licensee emergency plans. 50.54(q)
18 tells licensees how you go about making changes to
19 those emergency plans. The regulations contemplate two
20 kinds of changes, changes that result in a reduction
21 in effectiveness, and changes that do not.

22 Changes that result in a reduction in
23 effectiveness are addressed in the regulation at
24 (q)(4). If a licensee wants to make that kind of
25 change, the licensee has to apply for a license

1 amendment and must obtain NRC's prior approval. If the
2 change is a change that does not result in a reduction
3 in effectiveness and the removal of ERDS from the
4 licensee's emergency plan is just that kind of change,
5 the licensee may make that change without NRC's prior
6 approval so long as the licensee performs and retains
7 the analysis that has been discussed earlier today.

8 CHAIR HAWKENS: Do you receive the results
9 of that analysis?

10 MS. MIZUNO: Pardon me?

11 CHAIR HAWKENS: Do you receive the results
12 of any analysis?

13 MS. MIZUNO: The results of that analysis
14 are kept at the site. We do get a written summary
15 within 30 days of the change, but the analysis itself
16 is available at the site for a Resident Inspector or
17 material inspections after-the-fact.

18 CHAIR HAWKENS: Is that something that
19 State or a member of the public would have access to
20 if they requested to see it?

21 MS. MIZUNO: I'm not sure, Your Honor. I
22 don't know that anyone ever has. Your Honor asked a
23 lot of questions that go to my third point, and this
24 is the regulatory responsibility for evaluating
25 interfaces with state and local governments. And also

1 for reviewing whether state and local emergency plans
2 are adequate and capable of being implemented.

3 The answer is pretty straightforward. FEMA
4 has responsibility to make findings as to whether
5 state and local government's off site emergency plans
6 are adequate and can be implemented. FEMA is
7 responsible for providing coordination and guidance
8 for emergency planning for off site impact of
9 radiological emergencies. The NRC has regulatory
10 responsibility for emergency planning for licensees.

11 Now, FEMA and the NRC entered into a
12 Memorandum of Understanding. It seems we have several
13 of those floating around in this proceeding. The FEMA-
14 NRC Memorandum of Understanding was published at 44
15 CFR Part 350, Appendix A, and that Memorandum of
16 Understanding sets out the relationship between the
17 two parties.

18 Pursuant to that Memorandum of
19 Understanding, FEMA communicates its findings to the
20 NRC, and the NRC reviews the FEMA findings as part of
21 its safety evaluation for licensing matters, for
22 licensing matters that determine whether emergency
23 preparedness provides reasonable assurance that
24 adequate protective measures can and will be taken in
25 the event of a radiological emergency.

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1 And in this instance with respect to the
2 license amendment that is on the table and at issue
3 today, with respect to that license amendment
4 regarding a reduction in staffing, the NRC requested
5 FEMA's review and concurrence. And FEMA wrote back,
6 and FEMA said, "A review of the license amendment
7 noted that the changes were coordinated with and
8 approved by the States of Massachusetts, New
9 Hampshire, and Vermont."

10 FEMA Region I reviewed these changes for
11 impact to the state and local organizations, and
12 determined that the amendment would not significantly
13 affect the states' plans based on information from the
14 affected states.

15 We also would like to point out here that
16 the State of Vermont's Division of Emergency
17 Management and Homeland Security under -- sorry,
18 Homeland Security similarly determined, "That the
19 impact of the license amendment is minimal to the
20 State's ability to coordinate with plant personnel
21 during an emergency." And that takes of the areas that
22 I had, Your Honor.

23 MR. WACHUTKA: Your Honor, this is Jeremy
24 Wachutka. I'm going to continue the argument now.

25 As Ms. Mizuno demonstrated, Vermont's

1 hearing request is outside the scope of the license
2 amendment request in this proceeding.

3 CHAIR HAWKENS: Mr. Wachutka, could we
4 interrupt you? Judge Kennedy has a question for Ms.
5 Mizuno.

6 MR. WACHUTKA: Sure, Your Honor.

7 JUDGE KENNEDY: This is Judge Kennedy. You
8 started talking about Memorandums of Understanding,
9 and you stopped at FEMA and NRC. I'm curious about why
10 the NRC entered a Memorandum of Understanding with the
11 State of Vermont over ERDS?

12 MS. MIZUNO: Yes. Your Honor, that's not
13 unusual. The NRC entered into a number of Memorandums
14 of Understanding with a number of states. And the
15 Memorandum of Understanding was published in the
16 Federal Register.

17 The Memorandum of Understanding also
18 provides -- first off, I want to make clear that it's
19 the -- the ERDS system is a system that runs from the
20 plant to the NRC Operations Center. It does not run
21 straight to the State of Vermont, or any state. In
22 order for states to obtain that kind of data feed,
23 they need to have entered into a Memorandum of
24 Understanding with the NRC. And in this case, Vermont
25 did that, and we've had that MOU in effect for several

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1 decades.

2 We also wanted to point out that MOU
3 provides that either party can cancel their engagement
4 under this MOU with 30 days notice. So, I think it's
5 important to -- it bolsters our position that this
6 ERDS data feed is a function of the MOU. It is not a
7 function of the license amendment request. If the
8 license amendment request had never been submitted,
9 the NRC could still theoretically have cut the ERDS
10 feed to the State of Vermont because it is our
11 prerogative with 30 days notice under the MOU. It has
12 nothing to do with the reduction in staffing.

13 MR. WACHUTKA: And, Your Honor, this is
14 Jeremy Wachutka. I'd like to add to that. There seems
15 to be some confusion here where they're thinking that
16 Entergy provides ERDS data to Vermont; however, that
17 is incorrect.

18 By regulation, Entergy is required to
19 provide an ERDS connection between Vermont Yankee and
20 the NRC only, and Entergy describes this connection in
21 Section 7.10 of the Vermont Yankee Emergency Plan.
22 However, nothing in the Commission's regulations
23 requires, and nothing in the Vermont Yankee emergency
24 plan voluntarily commits Entergy to provide ERDS data
25 to Vermont.

1 Instead, in the case of an emergency the
2 Vermont Yankee emergency plan states that Vermont
3 Yankee will provide information to Vermont via other
4 means. These means are, one, an email message called
5 the "Inform Notification System". Two, a dedicated
6 phone circuit called the, "Nuclear Alert System," or
7 through commercial phone systems as a backup. And,
8 three, through the Vermont representatives that will
9 be dispatched to the Vermont Yankee Emergency
10 Operations facility.

11 This is all described, Your Honors, in
12 Section 11 of the Vermont emergency plan, and Section
13 7. And through these channels, Vermont will be given
14 data such as a description of the emergency and any
15 release, the weather conditions, the projected dose
16 rates at various distances from the plant, the
17 emergency response actions underway, and the
18 recommended protective actions. So, therefore, Your
19 Honors this isn't about ERDS going to Vermont from
20 Vermont Yankee. There's no requirement for that. There
21 are other provisions in place in the Vermont Yankee
22 emergency plan, and these provisions insure that
23 Vermont will receive the information that they need.
24 And this information is comparable to any information
25 that would come from ERDS. So, therefore, Your Honors,

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1 this is outside the scope of really the license
2 proceeding -- license amendment request that we should
3 be discussing here.

4 CHAIR HAWKENS: Mr. Wachutka, Mr. Kisicki
5 said that ERDS provide 37 parameters on a realtime
6 constant basis.

7 MR. WACHUTKA: Your Honor --

8 CHAIR HAWKENS: Will any of those
9 parameters be provided on a realtime constant basis
10 after ERDS is terminated?

11 MR. WACHUTKA: Your Honor, the Staff
12 doesn't know where the number of 37 parameters came
13 from. From what we see, there's -- I mean, most of the
14 parameters sent by ERDS are not going to be applicable
15 any more once the reactor is shut down. And those
16 remaining parameters, those will be -- those can
17 easily be transmitted by the Vermont representatives
18 that will be at the emergency operations facility
19 verbally through the dedicated phone lines.

20 And this is really -- this really goes
21 back to the whole origination of ERDS. I mean, ERDS is
22 an improvement to the emergency notification system
23 that's in place which is the voice circuits between
24 the NRC and the plant. And ERDS is a supplement to the
25 system, and that's how it's described in the Statement

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1 of Considerations. So, really what they're going to
2 get is comparable to what they'd get via ERDS, and
3 there's less parameters than there would be for an
4 operating reactor. And, furthermore, any sort of
5 emergency that would happen in a shut down facility
6 with the fuel only in the spent fuel pool would be
7 much slower moving evolution with less parts to
8 analyze. So, therefore, all this could be transmitted
9 through the Nuclear Alert Phone System and the Vermont
10 representatives on site.

11 So, in addition to that, Your Honor, we
12 discuss that this is outside the scope of the license
13 amendment request which is a reduction in staffing,
14 not a request to remove ERDS. But even if this were a
15 request to eliminate ERDS, the elimination of ERDS
16 after a facility's permanent shut down is already
17 expressly provided for by the Commission's
18 regulations. Therefore, through its hearing request,
19 Vermont is actually --

20 JUDGE WARDWELL: Excuse me. This is Judge
21 Wardwell. I assume you mean the Appendix E, the same
22 discussion we had earlier?

23 MR. WACHUTKA: Yes, Your Honor. We read
24 Appendix E --

25 JUDGE WARDWELL: I understand, don't spend

1 time. I just wanted to verify that's what you're
2 thinking.

3 MR. WACHUTKA: Yes, Your Honor. So,
4 discussing the interpretation of Appendix E, when you
5 interpret statutes, first of all, you look at the
6 plain ordinary language, the ordinary meaning of the
7 language. In this case, the plain ordinary meaning of
8 the provision is that ERDS does not have to be
9 provided for facilities that are shut down permanently
10 or indefinitely.

11 And based on a review of the Statement of
12 Considerations for the ERDS rulemaking, the term "shut
13 down permanently or indefinitely" does not appear to
14 be a defined term of art. However, shut down
15 permanently or indefinitely must at least include a
16 nuclear power facility that has submitted to the NRC
17 a certification under oath or affirmation that fuel
18 has been permanently removed from the reactor vessel.
19 This is because at this point in time the facility
20 physically cannot be operated and, thus, must be shut
21 down permanently or indefinitely.

22 As we discussed in the Statement of
23 Considerations, it does premise the whole thing as at
24 operating facilities. And, furthermore, such a shut
25 down is permanent when you are permanently -- when you

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1 have -- when you're permanently defueled. Such a shut
2 down is "permanent" by Commission rule because
3 according to 10 CFR Section 50.82(a)(2), "Upon
4 docketing of the certification for permanent cessation
5 of operations and permanent removal of fuel from the
6 reactor vessel, the 10 CFR Part 50 license no longer
7 authorizes operation of the reactor or emplacement or
8 retention of fuel into the reactor vessel."

9 Therefore, Your Honors, physically the
10 reactor can't be operated because the fuel is in the
11 spent fuel pool. And by regulation the reactor can't
12 be operated because the license no longer allows for
13 that any more. And, therefore, the plain language
14 reading supports the reading that the Staff and
15 Entergy have advocated for, and the history of the
16 implementation of this regulation supports that, as
17 well, Your Honor.

18 If Vermont's interpretation were correct,
19 then there would be no end point at which ERDS has to
20 be removed, so that would just -- that would be
21 nonsensical. In that case --

22 CHAIR HAWKENS: Mr. Wachutka, may I
23 interrupt for a second? Judge Hawkens. How many
24 reactors have been shut down after installing ERDS
25 hardware, and how many of those that have been shut

1 down has ERDS been discontinued?

2 MR. WACHUTKA: Yes, Your Honor. I can say
3 since 1991 we have Zion, Maine Yankee, Connecticut
4 Yankee, Humboldt Bay, LaCrosse and Trojan. All of
5 these facilities have been shut down and there is no
6 longer any ERDS connection between the NRC Operations
7 Center and those facilities.

8 CHAIR HAWKENS: How many times has ERDS
9 been -- the shut down of the ERDS been contested by an
10 intervenor?

11 MR. WACHUTKA: To the Staff's knowledge, it
12 never has before, Your Honor.

13 CHAIR HAWKENS: Thank you.

14 MR. WACHUTKA: So, in all these instances
15 it's happened, if Vermont's interpretation were
16 correct, you'd be able to go down to the NRC
17 Operations Center right now and pull up Zion on the
18 ERDS, but you can't do that. That doesn't make any
19 sense, Your Honor.

20 And, furthermore, even more recently, the
21 facilities that have been defueled, such as SONGS,
22 Crystal River, and Kewaunee, they're doing the exact
23 same process. For example, the certifications of
24 permanent fuel removal were submitted for San Onofre
25 Units 2 and 3 in July and June 2013, and on August

1 26th, 2014 after that Southern California Edison
2 revised its emergency plan implementing procedures
3 without prior NRC approval to remove all references to
4 ERDS. They followed the 50.54(q)(3) process after they
5 submitted the certification of permanent defueling.

6 The same thing was done by Crystal River,
7 and the same thing is being done by Kewaunee, Your
8 Honors, so not only is this the NRC's interpretation
9 and Entergy's interpretation of the case, all previous
10 plants have interpreted this regulation in the same
11 way. So, not only can Vermont not point to any support
12 for their argument, but also all precedent is
13 supporting the NRC Staff position here.

14 In conclusion, Your Honor --

15 CHAIR HAWKENS: Mr. Wachutka, we've got
16 another question.

17 MR. WACHUTKA: Yes?

18 CHAIR HAWKENS: After Entergy completes its
19 50.54(q)(3) analysis, would Vermont have an
20 opportunity to challenge it?

21 MR. WACHUTKA: Your Honor, the Staff sees
22 the 50.54(q)(3) analysis as an analogous to the 50.59
23 process for changing facilities without a license
24 amendment. So, therefore, there is no opportunity for
25 a hearing to change your license without a license

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1 amendment. An opportunity for a hearing is only
2 triggered by a license amendment, so in this case
3 there have been no 50.54(q)(3) analysis, so it's
4 premature to challenge that now. And in the future
5 when that analysis does happen, Vermont would be
6 welcome to file a 10 CFR Section 2.206 petition for
7 NRC action if they think that we are erroneously not
8 enforcing the regulations against Vermont Yankee, but
9 that's the only way to challenge it under our
10 regulatory framework, Your Honor.

11 CHAIR HAWKENS: They would not be able to
12 bring a de facto license amendment proceeding, would
13 they?

14 MR. WACHUTKA: No, Your Honor. A de facto
15 license amendment proceeding requires NRC Staff
16 action, and this is not NRC Staff action.

17 Furthermore, Your Honor, Vermont makes
18 this 1991 argument trying to interpret the shut down
19 permanently language to only apply as of 1991. It
20 points to no support for this. And more importantly,
21 the traditional of rule and statutory interpretation
22 as stated by the Supreme Court is that statutes are
23 presumed to be prospective, so there's nothing to
24 think that this statute with no language to indicate
25 that just applied in 1991 and didn't apply to all

1 future reactors, as all regulations are normally
2 assumed to do. And this stands in contrast to other
3 NRC regulations that are limited in time.

4 In these examples you'll see throughout
5 Part 50, such as in 50.33(k)(2), 50.34(a)(11) said,
6 there are lots of regulations that say as of this
7 year, you know, through this year, so the NRC Staff
8 when it writes rules it knows how to limit them in
9 time, and does do that.

10 In this case, the NRC purposely did not do
11 that. So, therefore, this should be interpreted in the
12 traditional sense, which is that it's prospective rule
13 that applies in all future situations.

14 And as stated before, Your Honor, it would
15 just -- it would be logically nonsensical if it
16 didn't, or else we would have written this regulation
17 and not had an end point where it doesn't apply any
18 more. So, like I said, I mean, Zion would still have
19 to have ERDS, or a plant that's totally torn down
20 which by the letter of the rules still have to have
21 ERDS even though it wouldn't physically be possible.

22 CHAIR HAWKENS: In regards to the shut down
23 then, if it applied to all future shut downs, it also
24 applies to all future licensees. Is that correct?

25 MR. WACHUTKA: That's correct, Your Honor.

1 CHAIR HAWKENS: Isn't it logically
2 nonsensical that the licensee, a new licensee now is
3 going to have to meet the dates of the deadlines that
4 are presented in Appendix E?

5 MR. WACHUTKA: The deadlines are for
6 individuals that didn't have ERDS before they had a
7 license.

8 CHAIR HAWKENS: That's what the plain
9 language says?

10 MR. WACHUTKA: But in the future, all COL
11 applicants will have ERDS as part of their license.

12 CHAIR HAWKENS: So, you say there are no
13 future licensees that would deal with Appendix E.
14 Appendix E doesn't apply to any future licensee?

15 MR. WACHUTKA: Appendix E applies to all
16 Part 50 licensees, and applies to all Part 52
17 licensees. So, therefore, new plants have to have ERDS
18 and when those new plants permanently shut down they
19 will not be required to have ERDS any further
20 according to Section 6.2.

21 CHAIR HAWKENS: Right. But under your
22 interpretation of how this applies wouldn't it be
23 illogical for them, the new licensees to have to meet
24 those deadlines, and it's impossible for them to do
25 it?

1 MR. WACHUTKA: I mean, no, Your Honor. I
2 think that it would be more illogical to say --

3 CHAIR HAWKENS: Not impossible for them to
4 do it?

5 MR. WACHUTKA: Your Honor, I think it would
6 be illogical to think that plants have to have ERDS
7 throughout perpetuity without an end date.

8 CHAIR HAWKENS: Mr. Wachutka, in the
9 proposed rule they talk about the cost impact of the
10 rule estimated to be about \$150,000 for one reactor
11 which represent the incremental work of installing and
12 operating the ERDS for 30 years.

13 MR. WACHUTKA: Yes, Your Honor.

14 CHAIR HAWKENS: Is that 30 years cut in one
15 direction or the other regarding exempting permanently
16 shut down reactors?

17 MR. WACHUTKA: I think it cuts in favor of
18 the Staff's interpretation, Your Honor, because the
19 rule at first was as we were saying how do we apply
20 this to plants that do not have ERDS? So, that is part
21 of that justification. But in the future all plants
22 are required to have ERDS, so there's no backfit to a
23 new plant that is getting say a COL license, or a new
24 Part 50 license, because all these regulations already
25 apply to it from the get-go.

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1 MS. MIZUNO: This is Beth Mizuno. I have a
2 question. I'm not quite sure what dates, Judge
3 Wardwell, you find inconsistent with our
4 interpretation. I see a passage in Appendix E that
5 talks about -- it's Subsection B, and it says, "Each
6 licensee shall complete implementation of the ERDS by
7 February 13, 1993, or before initial escalation to
8 full power, whichever comes later." So, it seems to me
9 that there is no incompatible date being used in
10 Appendix E.

11 JUDGE WARDWELL: Thank you.

12 MR. WACHUTKA: Therefore, Your Honors, in
13 conclusion, Vermont's proposed contention arguing that
14 Vermont Yankee should maintain ERDS after its
15 permanent shut down is squarely a challenge to the
16 Commission's regulations and not Entergy's license
17 amendment request. Therefore, it is both outside the
18 scope of this license amendment proceeding, and it's
19 a collateral attack on the regulations without any
20 sort of petition for a waiver of those regulations and
21 should be denied, Your Honors.

22 CHAIR HAWKENS: Mr. Wachutka, in your view
23 which is the stronger argument, being a collateral
24 attack on the regulation, or it being outside the
25 scope?

1 MR. WACHUTKA: Your Honor, I think they're
2 alternative arguments that are both equally a strong
3 bases for the inadmissibility of the contention.

4 CHAIR HAWKENS: All right, thank you.

5 MR. WACHUTKA: Thank you.

6 CHAIR HAWKENS: Mr. Kisicki, we'll hear
7 from you now, any rebuttal?

8 MR. KISICKI: Yes, thank you.

9 I think what the State needs to make
10 crystal clear to the Board at this moment is that what
11 we're talking about is the protection of public health
12 and safety. That is central to what the NRC does, and
13 the reason why we're speaking today.

14 And the contention, the core contention of
15 the State of Vermont is that the elimination of ERDS,
16 which is explicit in a license amendment request is --
17 - significantly implicates whether or not the State
18 can effectively protect the health and safety of its
19 own citizens. That is uncontested, it's unrefuted
20 throughout this oral argument. I think that that
21 serves as a telling and meaningful backdrop to what
22 we've been discussing today.

23 CHAIR HAWKENS: Mr. Kisicki, your argument,
24 though, hinges on the Board accepting your view of
25 Appendix E. Is that correct?

1 MR. KISICKI: Appendix E in terms of the
2 exception?

3 CHAIR HAWKENS: Yes.

4 MR. KISICKI: I don't know that it hinges
5 entirely on it. Again, I think to go back -- at its
6 core, you know, when the NRC was discussing the
7 implementation of ERDS, and this is from the ERDS
8 discussion on August 13th, 1991, the citation is
9 Volume 56 of the Federal Register 40178.

10 "The NRC in its mandated role to protect
11 public health and safety has the responsibility in the
12 event of an accident to monitor the actions of the
13 licensee that has the primary responsibility for
14 limiting the consequences of the accident," -- I'm
15 sorry, this refers to reactor accidents. I don't want
16 to leave that out.

17 "The NRC also has an important role in
18 assuring a flow of accurate information to affected
19 on-site officials and the public regarding the status
20 of the emergency, and as requested or needed giving
21 advisory support or assistance in diagnosing the
22 situation, isolating critical problems, and
23 determining what remedial actions are appropriate. The
24 NRC must be capable of providing to the state and
25 local authorities and to other federal agencies an

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1 independent assessment of protective actions
2 recommended by the licensee."

3 That is strong language from the NRC in
4 the rationalization of why it should adopt ERDS. And
5 I think it militates towards accepting the State's
6 interpretation of Subsection E. I think even if you
7 reject it, there is a clear policy argument that I
8 would raise, the regulatory argument here. Public
9 health and safety is critical, and the hook here is
10 not as Entergy indicates that somehow there's a
11 reduction in employees that's needed. No, in the
12 license amendment request in Appendix -- in Attachment
13 4, this is page 8 of the attachment, it says clearly,
14 "The VY Emergency Response Data System linked to the
15 NRC will not be operational in a permanently shut down
16 or defueled condition. The task of ERDS activation is,
17 therefore, not included on this on shift task
18 requiring evaluation as part of its testing analysis."
19 That is a critical component to the LAR. And the hook
20 is not the staffing reduction. It is clear on the face
21 of the LAR itself that ERDS will be eliminated, and
22 that's the hook.

23 Now, the discussion between the convoluted
24 connection between Vermont Yankee to the NRC, and NRC
25 to the state is immaterial because in the end both the

1 Vermont Yankee Emergency plan reference the ERDS
2 system as playing a vital role, and the Vermont State
3 Emergency Response Plan talks about ERDS. Again, our
4 expert has identified 37 parameters under which ERDS
5 is critical here.

6 Now, I think it also should be mentioned
7 that much of the discussion that Entergy and the NRC
8 Staff had with the Board Members here today go to the
9 merits of the argument. At this point at the
10 contention phase we don't need to discuss the merits
11 here. At this point we have a factual basis supported
12 by expert testimony that there a sufficient reason to
13 hold a hearing. We can discuss whether or not there's
14 effective data responses at the EOF, you know,
15 comparable to the ERDS data that's available now.

16 But here's the problem with all of this.
17 Entergy has conceded after that that there's already
18 an ERDS -- an ERDS system will not be shut off, it
19 just won't go to the NRC any more. And somehow Entergy
20 is arguing that it will cost them almost \$700,000 over
21 the next six years to maintain a connection with the
22 NRC. That alone is probably enough of a basis to at
23 least hold an evidentiary hearing to determine whether
24 or not that's the case, and to see whether or not it's
25 economically feasible to continue ERDS. If ERDS is not

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1 going away and the data is still going to be
2 collected, I don't see what the burden here on
3 Entergy's part is to continue having ERDS access to
4 the NRC, and then have State access to it.

5 Alternatively, if they want to go ahead
6 and discontinue access -- ERDS access by the NRC,
7 which again would be in violation of the clear policy
8 rationale expressed in 1991 that I read earlier, that
9 the NRC has an obligation to look at this data, that
10 it's important to them, but there can be an
11 alternative that could be fashioned between the State
12 and the plant being alternative. But right now none of
13 the analysis exists to show that the absolute
14 elimination of this somehow conforms to the
15 requirements of 50.54(q).

16 I would also note, you know, Entergy
17 relies on what I'll term the Lewis Memorandum as an
18 argument for why their arguments should hold the day.
19 However, the Lewis Memorandum, you know, (a) I think
20 incorrectly interprets the exception language in
21 Appendix E. But even in the case that the Board
22 assumes that the Lewis Memorandum interprets that
23 language correctly, if that's the case, the Lewis
24 Memorandum militates heavily towards the State's
25 interpretation here.

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1 It says on page 2 very clearly, "However,
2 if the licensee's emergency plan relies upon ERDS for
3 the provision of assessment data to the emergency
4 response organization and with the states" -- that's
5 me inserting my own words there -- "which is an
6 emergency planning function, the licensee will need to
7 evaluate whether removing ERDS results in a reduction
8 in effectiveness during special circumstances. In
9 either case, the licensee of a permanently shut down
10 facility seeking to remove ERDS is required by
11 Paragraph 50.54(q)(3) to perform and retain an
12 analysis that concludes that the removal of ERDS is
13 not a reduction in effectiveness."

14 A simple cross-reference to this note does
15 not satisfy that requirement. Here it seems that the
16 NRC Staff is arguing that it has already seen that
17 analysis and has already made the determination that
18 there's not a reduction in effectiveness. If that's
19 the case, the NRC Staff is now arguing that it has the
20 ability to look at analysis as it sees fit and make
21 determinations as to whether or not there's effective
22 -- make an effectiveness determination with respect to
23 a license amendment request.

24 That absolutely underscores why we need
25 to have a hearing here so that the State can put its

1 case on before the Board. To think of it to say that
2 the NRC Staff has the ability to make determinations
3 unilaterally I think is inappropriate.

4 CHAIR HAWKENS: Mr. Kisicki, this is Judge
5 Hawken. Aren't you confusing the 50.54(q)(3) analysis
6 with the license amendment request? They're two
7 different functions. One provides an opportunity for
8 a hearing to the public, the other does not.

9 MR. KISICKI: With respect to the -- I'm
10 sorry, could you repeat the question?

11 CHAIR HAWKENS: You were saying that the --
12 - and I'm not sure, I want to hear back from Mr.
13 Wachutka again, but I don't recall him saying that
14 Staff had already reviewed the analysis performed by
15 Entergy. It's 50.54(q)(3), but putting that side, are
16 you stating it's your belief that Entergy has to give
17 the public an opportunity for a hearing when it
18 performs its 50.54(q)(3) analysis?

19 MR. KISICKI: No, I'm not arguing that it's
20 obligated to put it for a public hearing, though I
21 think in this case that the State of Vermont has
22 satisfied the requirements for contention
23 admissibility that we have a unique issue with respect
24 to the 50.54 analysis in so far that it hasn't been
25 conducted yet. And we had the no showing by Entergy in

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1 its license amendment request that there'll be a
2 reduction in emergency plan capability. And that's the
3 issue that the State is requesting a hearing to debate
4 these things, to debate whether or not -- you know,
5 hold an evidentiary hearing to determine whether or
6 not, in fact, it's going to cost \$700,000 to continue
7 ERDS maintenance at the plant for the next six years,
8 you know, whether or not it's feasible. It's issues
9 like that that we need to be able to discuss
10 thoroughly, particularly in light of the fact that so
11 far Entergy has not provided any analysis with respect
12 to 50.54(q)(3) ERDS elimination at the plant.

13 You know, I think in summation the State
14 has engaged and continues to engage in negotiations
15 here with Entergy. And I looked at my notes while the
16 other parties were arguing, from notes it indicates
17 that -- and I correct myself, that the State was not
18 necessarily aware of the fact that we weren't going to
19 reach a settlement through negotiations until the
20 weekend leading up to the Monday deadline. It simply
21 was not enough time for us to file, you know, in a
22 form the Commission deems that it prefers.

23 Again, a lot of this discussion here is --
24 - goes to the merits which we are happy to discuss.
25 But at this point, you know, all we know is that the

1 State Emergency Response Plan and the VY Emergency
2 Response plans specifically to ERDS. Any discussion
3 about there being comparable information services
4 through the EOF, through phones is not material to the
5 discussion that we're having here today. That should
6 be, you know -- and, again, there's no evidence in the
7 record that indicates that that's the case.

8 Right now what's in the record is that
9 both the State plan and the VY emergency plan call for
10 ERDS access. That alone is enough, I think, to warrant
11 further hearing, and respectfully request that the
12 Commission grant that request for a hearing.

13 JUDGE KENNEDY: Mr. Kisicki, this is Judge
14 Kennedy. I just want to clarify, maybe you can help me
15 understand. I thought I heard the NRC Staff indicate
16 that both the State of Vermont, the State of
17 Massachusetts, and the State of New Hampshire approved
18 the change in staffing.

19 MR. KISICKI: I'm very glad that you asked
20 that question. My understanding is that is not the
21 case at all, that FEMA's representation -- first off,
22 that's a new argument that's nowhere in the NRC
23 Staff's pleadings to begin with. I think that it's
24 outside the scope of what we should be discussing now.
25 But more to the point, it's the State of Vermont's

1 understanding that the State of Vermont actually did
2 not approve -- did not indicate to FEMA that it
3 approved the staffing reduction. In fact, in said it
4 needed more information before it could make a
5 determination as to whether the staffing reductions
6 were acceptable to the Vermont agencies for the
7 liaison with FEMA.

8 JUDGE KENNEDY: Just one other
9 clarification, has the State of Vermont received any
10 indication of termination of the Memorandum of
11 Understanding with the NRC?

12 MR. KISICKI: Not that I'm aware of.

13 JUDGE KENNEDY: Thank you.

14 CHAIR HAWKENS: Do you have anything else,
15 Mr. Kisicki?

16 MR. KISICKI: I do not. Thank you for your
17 time.

18 CHAIR HAWKENS: This is Judge Hawkens. Mr.
19 Wachutka, I have a couple of questions for you,
20 please.

21 MR. WACHUTKA: Yes, Your Honor.

22 CHAIR HAWKENS: Can you respond to Mr.
23 Kisicki's understanding that neither FEMA nor the
24 States have approved the staff reduction proposal?

25 MR. WACHUTKA: Your Honor, I'd let Ms.

1 Mizuno speak to that.

2 CHAIR HAWKENS: Okay.

3 MS. MIZUNO: Your Honor, I don't understand
4 where Mr. Kisicki is coming from, because I am looking
5 at FEMA's comments on the license amendment request.
6 We asked for their findings. They sent findings in.

7 CHAIR HAWKENS: And was that in your
8 pleadings, Ms. Mizuno?

9 MS. MIZUNO: No, sir, it was not, but you
10 asked about it and so I answered.

11 CHAIR HAWKENS: No, I appreciate that.

12 MS. MIZUNO: Your Honor, the -- with
13 respect to a lot of these emergency planning documents
14 they are by default classified as non-public. I have
15 an ML number for it, but it is a non-public ML number.
16 When there is a need for emergency planning documents
17 such as this to be made available, they can be, but
18 it's a default classification because we have so many
19 coming in all at once. That is my understanding. So,
20 if the Judges and the parties would like a copy of the
21 document, please so instruct Staff and we will provide
22 you one. The Staff can review and make the document
23 public in an expeditious fashion, Your Honor.

24 CHAIR HAWKENS: All right, thank you. Well,
25 if either of the parties would like that, I'll let

1 them work that out with you, Ms. Mizuno.

2 MS. MIZUNO: Yes, sir.

3 CHAIR HAWKENS: Mr. Wachutka, another
4 question for you. Can you specify the number of
5 reactors that have permanently shut down since '93,
6 and then the number that have discontinued maintenance
7 of ERDS?

8 MR. WACHUTKA: Yes, Your Honor. If you can
9 give me one second, I can look it up.

10 CHAIR HAWKENS: Sure.

11 MR. WACHUTKA: Your Honor, we count that
12 there's been 10 since 1991, and one in 1991, so 11
13 including that one. And there's no ERDS connection
14 between any of these plants. And currently we have
15 SONGS, Kewaunee, and Crystal River which as we
16 discussed are undergoing decommissioning. All of those
17 are defueled and all of those plants have changed
18 their emergency plan without prior NRC approval to
19 remove all references to ERDS.

20 CHAIR HAWKENS: Thank you. And I have one
21 final question, and then my colleagues may have some.
22 But when the rule was promulgated it excepted Big Rock
23 Point and all nuclear power facilities that are shut
24 down permanently. Were any of the facilities that were
25 shut down permanently, did they have spent fuel in the

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1 pools, and were not required to implement ERDS?

2 MR. WACHUTKA: Yes, Your Honor, we can look
3 that up and get you a response.

4 CHAIR HAWKENS: I'd be grateful for that.

5 MR. WACHUTKA: Your Honor, you want to know
6 plants that were shut down permanently as of 1991, and
7 if there was any fuel in the pools.

8 CHAIR HAWKENS: Correct.

9 MR. WACHUTKA: Okay, Your Honor, we will
10 look that up and we will notify all the parties.

11 CHAIR HAWKENS: All right. This is Judge
12 Hawkens. I thank everybody for their participation.
13 It's helped us out immensely, and your case is
14 submitted. We're adjourned.

15 If you'd stay on the line so Brandon can
16 follow-up with any questions he may have regarding
17 transcript needs, I'd be grateful. Thank you.

18 COURT REPORTER: I actually don't have any
19 questions.

20 CHAIR HAWKENS: Good, then we're
21 terminated, we're adjourned. Thank you.

22 MR. KISICKI: Thank you.

23 MS. RAIMO: Thank you.

24 (Whereupon, the above-entitled matter went
25 off the record at 5:05 p.m.)